

Applicants: Carlos Cordon-Cardo et al.
Serial No.: 09/329,917
Filed : June 10, 1999
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REMARKS

Claims 2 and 3 are pending in the subject application. In view of the arguments set forth below, applicants maintain that the Examiner's rejections have been overcome and respectfully request that the Examiner reconsider and withdraw same.

Provisional Nonstatutory Double Patenting Rejection

The Examiner provisionally rejected claim 2 under the judicially created doctrine of obviousness-type double patenting as allegedly unpatentable over claim 2 of copending Application No. 10/009,861. The Examiner stated that although the conflicting claims are not identical, they are not patentably distinct from each other. The Examiner stated that this is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

The Examiner also provisionally rejected claims 2 and 3 under the judicially created doctrine of obviousness-type double patenting as allegedly unpatentable over claims 2 and 3 of copending Application No. 10/288,609. The Examiner stated that although the conflicting claims are not identical, they are not patentably distinct from each other. The Examiner stated that this is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

In response to the above rejections, applicants respectfully traverse. Applicants contend that the Examiner's rejection of claims 2 and 3 is misplaced and should be withdrawn. In support, applicants direct the Examiner's attention to MPEP §804(I)(B) which states as follows:

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"The 'provisional' double patenting rejection should continue to be made by the examiner in each [copending] application as long as there are conflicting claims in more than one application unless that 'provisional' double patenting rejection is the only rejection remaining in one of the applications. *If the 'provisional' double patenting rejection in one application is the only rejection remaining in that application, the examiner should then withdraw that rejection and permit the application to issue as a patent, thereby converting the 'provisional' double patenting rejection in the other application(s) into a double patenting rejection at the time the one application issues as a patent.*" [emphasis added]

Applicants note that the provisional nonstatutory obviousness-type double patenting rejections of claims 2 and 3 are the only rejections remaining in the subject application. Pursuant to MPEP §804(I)(B), the provisional obviousness-type double patenting rejections against claims 2 and 3 should be withdrawn. Accordingly, applicants respectfully request that the Examiner reconsider and withdraw this ground of rejection.

Summary

For the reasons set forth hereinabove, applicants respectfully request that the Examiner reconsider and withdraw the sole remaining ground of rejection and earnestly solicit allowance of the pending claims, i.e. claims 2 and 3.

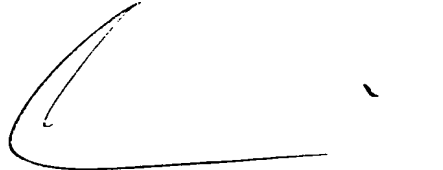
If a telephone interview would be of assistance in advancing

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prosecution of the subject application, applicants' undersigned attorneys invite the Examiner to telephone them at the number provided below.

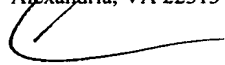
No fee is deemed necessary in connection with the filing of this Communication. However, if any fee is required, authorization is hereby given to charge the amount of any such fee to Deposit Account No. 03-3125.

Respectfully submitted,



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I hereby certify that this correspondence is being deposited this date with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.


Alan J. Morrison
Reg. No. 37,399

12/01/04
Date